

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

ANC RENTAL CORPORATION dba
ALAMO RENT A CAR, INC.¹

Employer

and

CASE NO. 8-RC-16145

BAKERS' LOCAL UNION NO. 19,
affiliated with the BAKERY,
CONFECTIONERY, TOBACCO WORKERS
& GRAIN MILLERS INTERNATIONAL
UNION

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The Employer's name is based on the record evidence. In Board Exhibit 2, the parties stipulated that Alamo Rent A Car, Inc. is the name of the Employer. Later in the hearing, the Petitioner's Counsel raised an issue as to whether that is, in fact, the correct legal name. Based upon the documents contained in Er. Exh. 1, I find the Employer's name is that set forth above.

² Petitioner and Employer have timely filed briefs which have been carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees, employed by the Employer at its Maplewood Avenue, Cleveland, Ohio, facility, including service agents, lead service agents, shuttlers, hand-held/return agents, technicians, tire and lube employees, turnback lead persons, turnback assistants, and administrative clerks but excluding all other lead persons, rental lead agents, rental agents and managerial employees, and all professional employees guards and supervisors as defined in the Act.

There are approximately 23 employees in the unit found to be appropriate.

The Petitioner seeks a unit composed of service agents, shuttlers, hand-held/return agents, technicians, tire and lube employees, turn back lead persons and administrative clerks. The Employer contends that the only appropriate unit is an overall unit which would also include employees working as lead service technicians³, lead rental agents⁴ and rental agents. This unit would encompass approximately 31 employees.

The first issue presented in this case is whether the lead service agents and lead rental agents are statutory supervisors and should be excluded from the unit as the Petitioner contends.

³ At the hearing, this position was variously referred to a lead service technician, lead service agent and described by Petitioner in its brief as a lead sales agent. The position will be referred to herein as the lead service agent.

Additionally, the Employer contends the rental agents share a community of interest with the other employees and should be included in the unit. The Petitioner would exclude the rental agents from the unit found to be appropriate.

Only one individual, Chris Shirley, currently fills the lead service agent position. A second individual, Dwayne Redding also held this position until December 2000. Two individuals, Greg Burt and Penelope Wohlgemuth, work as lead rental agents. Mohammad Fetita, Tenisha Green, Barbara Hamilton, Layali Mohammad and Narkitta Rodriguez are the rental agents in dispute.

Steve Kudej, the city manager of the Cleveland Hopkins Airport Rental Car Center, Cleveland, Ohio⁵ and Dwayne Redding, an employee, testified at the hearing at the request of the Employer. The Petitioner called three employee witnesses: Monique Wallace, Kenneth Claypoole and Janice Priestley.

I. THE FACTS

The Employer is a Florida corporation which rents automobiles and has facilities throughout the United States including the one in issue. Customers arriving at the airport intending to rent automobiles or other motor vehicles proceed to a common shuttle area located on airport property.⁶ A shuttle bus, operated by either the city of Cleveland or a private contractor⁷, then transports customers to a common vehicle rental facility away from the airport grounds. The building houses rental facilities for numerous vehicle rental companies including the Employer. Customers desiring to rent vehicles from the Employer then proceed to a Alamo

⁴ Lead rental agents have also been referred to as lead sales agents.

⁵ The facility in issue is located at a site near the Cleveland-Hopkins International Airport in Cleveland, Ohio at 18715 Maplewood Avenue.

⁶ The facility moved to its present location in May 1998.

⁷ It is not clear if the shuttle bus operating from the airport to the common vehicle rental facility is operated by the city or a private contractor but it is not operated by any of the vehicle rental companies.

rental counter located in the common facility. The rental counter is staffed by a lead rental agent and other rental agents.

Outdoors, behind the rental counter, customers return vehicles which have been used. Hand-held/return agents greet the returning customers, inspect the vehicles for damage, and inquire as to whether the customer had any problems with the automobile. If so, they refer these concerns either to the mechanic's attention or to someone in supervision. The hand-held agent inputs information into a computer from where it can be retrieved by a rental agent. After the vehicles have been returned by customers, employees called "shuttlers" take them from the rental facility to the service lot and after service has been completed they are returned. The service area is located about a half mile from the rental area. The vehicles are serviced by technicians and tire and lube employees. Also working in the service area are employees who perform turn back work. These are individuals who manage and prepare cars that are to be turned back to dealerships or manufacturers for auction. The Employer also has one administrative clerk who handles invoices, deals with vendors and handles lost and found items.

Overseeing the Employer's operation at the Cleveland facility is city manager, Steve Kudej who has held the position since September 1999. Reporting directly to Kudej are two shift managers, Yolanda Donahue and Jerrone Jimison. The Employer has several individuals they have designated lead persons who work at the facility. William Davis is the turn back lead person, Shirley is the lead service agent, and Wohlgemuth and Burt work as lead rental agents. Dwayne Redding had worked as a service agent when he was hired in 1996, was promoted to lead service agent in 1997 and recently in late 2000 returned back to the position of service agent. Claypoole has worked as a service agent for four years. Davis is designated as a turn back lead and has one assistant working with him, Cletus Perchinske. Both individuals service

and prepare cars for auction. As noted above there are five rental agents at the facility. In addition, employee Wallace has worked as a shuttler for 2 years. Priestley is currently the administrative clerk at the facility and has worked there for five years.

The Cleveland facility is open seven days a week with hours ranging from 6:00 a.m. to midnight. Employees wear uniforms with the rental agents wearing more of a business attire with beige-like khaki pants, blue or blue-striped shirts and ties. Service and maintenance employees wear work clothes consisting of blue pants and t-shirts. All job applicants receive the same information packet complete the same employment paperwork and forms. All employees are required to have a valid driver's license. The tire and lube employees and the technicians must also have some mechanical skills. Employees are paid on an hourly basis but rental agents are also entitled to a sales commission based on how many contracts they write and the time of the year. The commission can range up to a thousand dollars a month. The hand-held/return agents are entitled to a bonus relating to the sale of gas but no gas sales bonus' have been earned or paid in the last year. The base hourly rate for employees is as follows: hand-held/return agent - \$7.75; rental agent - \$7.25; service agent - \$7.50; shuttler - \$6.25; tire and lube - \$8.00; and technician - in the \$10.00 range. Lead employees used to be paid a salary but this was changed to an hourly rate in 1997 or 1998. All employees are entitled to receive benefits including medical and dental coverage, life insurance, health care and a 401(k) plan.

The Parties are in agreement that the following classifications should be included in the unit: service agents, shuttlers, hand-held return agents, technicians, tire and lube employees, turnback lead persons and administrative clerks but excluding other managerial, supervisory, professional and guard employees. As noted, supra, the Employer contends that the service

agent and rental agent lead person positions and as well as rental agents should be included in the unit. The Petitioner would exclude these classifications.

II. ANALYSIS

A. THE LEADMAN/SUPERVISOR ISSUE

The Petitioner has requested the unit include the position of turnback leadperson but not other lead persons or supervisors within the meaning of the Act. The Employer has raised no objection to the inclusion of the turnback lead position but requests that other lead positions also be included in the Unit.

The evidence establishes that the Employer has two positions at its Cleveland facility, lead service agent and lead rental agent, which are in issue. Three individuals currently fill the two positions. In order for these individuals to be excluded, as the Petitioner contends, it must establish that they meet the definition of a statutory supervisor.

Section 2(11) of the Act defines "supervisor as follows:

"any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment."

The Board has consistently found that the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status on the employee, provided that the authority is exercised with independent judgment and not in a routine matter. **Pepsi-Cola Company, 327 NLRB No. 183 (1999); Providence Hospital, 320 NLRB 717 (1996); and Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986).** It is also well established that the burden of proving supervisory status rests on the party asserting such status. **Billows Electrical**

Supply of Northfield, Inc., 311 NLRB 878 (1993) and The Ohio Masonic Home, Inc., 295 NLRB 390 (1989).

In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are "vested with genuine management prerogatives" and lead persons who are protected by the Act even though they perform "minor supervisory duties." **Providence Hospital, supra at 725.** In each case presenting a supervisory issue, the Board must "differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestion, and between the appearance of supervision and supervision in fact." Ibid. at 725.

Since the Petitioner alleges that the lead persons are supervisors, it has the burden of proof on this issue. In applying the traditional criteria for the establishment of supervisory status to the facts of the instant case, I find for the reasons stated below that the Petitioner has failed to meet its burden and that the lead rental agents and lead service agent are not supervisors. The record in this case reveals the lead positions in issue do not have the authority to actually hire, discharge, and discipline other employees, to effectively recommend these actions or to perform the other functions enumerated in Section 2(11). In performing their duties the evidence does not establish they exercise independent judgment but merely serve as conduits from management to employees.

The lead service agent works side by side a group of service agents and his work duties include those done by the employees. The service agents have the responsibility for cleaning motor vehicles after they have been used and returned by customers. This work is also done by the lead person. It is clear that the final responsibility for hiring, discharge and meting out discipline rests with the city manager and the shift managers and not the lead person. Kudej

testified that the ultimate authority for these functions lie with him and the management team. There is no evidence to the contrary.

As to the question of effectively recommending hiring, discipline and discharge, Redding, who served as a lead service agent from about 1997 to late 2000 when he returned to his former position of service agent, testified that as a lead service agent he could effectively recommend hiring and discharging employees. A closer review of his testimony, however, fails to support his conclusion. He, like all other employees, could advise the Employer concerning potential job applicants. There is no evidence that his recommendations to his superiors carried more weight or were given any greater consideration than were the recommendations of any other employee at the facility.

There is a lack of evidence to establish that the lead service agent has authority to actually discipline or discharge employees or to make effective recommendations in this regard. There was only one incident reported when the lead service agent was even tangentially involved in disciplining employees. Testimony offered by Kudej indicates that on this one occasion Redding consulted with him regarding the discipline of an employee and that the employee was eventually discharged. A closer examination of the circumstances indicates, however, that there were other factors leading up to the employees' discharge and that Redding's role in the personnel action resulting in the employees' termination was less a recommendation and more of a reporting role.

The lead positions are involved in the process of appraising employees but their actions are limited. Kudej testified that the Employer does maintain an annual appraisal system. He indicated that the lead persons do a rough draft of appraisals for the employees working with them but these are subject to review by the management team for accuracy. There is no evidence

to indicate that the appraisals were used by management to provide wage or benefit increases to employees or to discipline them in any manner.

As with the appraisals, the lead persons have had some involvement with the initial preparation of work schedules for employees. This activity, however, is closely scrutinized by management. Redding testified that he had input into scheduling but that management set the schedules based on operational needs. Kudej noted that the leads can prepare a work schedule but only with and after approval by a manager.

Although the lead service agent does receive a somewhat higher wage, the position, as with service agents, is classified as an hourly and not a salaried position. Kudej testified the base rate of a service agent is \$7.50 and the lead position has a somewhat higher rate. The lead position and service agents are entitled to the same benefits.

The history of the facility suggests that at one time the lead positions may have been supervisory in nature. Kudej maintained that the positions used to be supervisory and were changed to lead positions sometime around 1998. His conclusion is supported by the fact that the position changed from salary to hourly pay at that time. Redding confirmed the change, and noted that his pay and authority were reduced at that time. Kudej stated that the lead position is merely that of a point of contact between management and the rank and file employees.

The Employer has issued small telephone cards to its employees advising them of the procedures for calling off work. The cards provide the phone numbers to contact. Dated October 2000, the cards, clearly identify the names of the three managers, Kudej, Donohue and Jimison, and four lead persons at that time: Penny Wohlgemuth, Greg Burt, Dwayne Redding and Chris Shirley. Although these individuals are all listed on the front of the card under the classification of "Management", the reverse side of the card clearly notes that employees must

speak to one of the managers or lead agents. This language suggests a distinction between managers and leads. Furthermore, there is no evidence to indicate that the lead individuals have any authority to grant time off or approve employees' call off from work. In this regard it appears that they are distinguished from the Employer's managers and act as conduits to pass the information on to the management team.

Kudej stated, unequivocally, his opinion that employees at the Cleveland facility do not consider the lead persons to be supervisors. Although this fact was contradicted by employees Wallace and Priestley, their testimony in this regard is somewhat vague. Initially, when Wallace was asked how he viewed the leads he said "as employees" and then stated "as supervisors". Priestly reported that she was advised the leads were considered management and if the city manager or shift managers were not present that employees should go to one of the leads because they were considered part of the management team. She never identified, nor was she asked, who gave her this information.

On the basis of this record the Petitioner has failed to meet its burden to establish that the lead service agent falls within the definition of a supervisor as defined in the Act. The position, currently held by Shirley, requires that the incumbent oversee the work of the service agents employed at the facility. The evidence leads to the conclusion that the position is no more than a conduit for management to the employees and does not require or permit the use of independent judgment. Considering all of the relevant factors, I conclude that the lead service agent is not a supervisor within the meaning of the Act. Since he shares a community of interest with the other service agents, I shall include him in the unit.

A review of the evidence relating to the lead rental agents also results in the conclusion that these individuals are not supervisors as defined in the Act. The lead rental agents,

Wohlgemuth and Burt, oversee the work of the rental agents working the rental counter. Kudej testified that these people serve as a point of contact between the managers and the rental agents. The lead rental agents receive a higher rate of pay but Kudej indicated that they are long-time employees. Both the lead rental agents and the journeymen are paid on an hourly basis with commissions.

As with the lead service agents, the lead rental agents are involved with preparing appraisals and employee schedules but their actions are subject to the review and approval of the management team. Similarly, in other respects the limited authority and duties of the lead rental agents mirrors that of the lead service agent. They do not have the actual authority to hire, discipline or discharge employees and there is a lack of evidence to suggest that they can effectively recommend such actions. They do not exercise independent judgement with respect to the activities enumerated in Section 2(11) of the Act. As with the lead service agents the lead rental agents merely serve as a conduit from the three managers at the Cleveland facility to the employees. Accordingly, I conclude that the lead rental agents are not supervisors within the meaning of the Act.

B. RENTAL AGENTS

The Employer seeks inclusion in the bargaining unit of the employees working as rental agents. There are 7 employees, including two leadpersons, in this classification. The Petitioner contends that these employees do not share a community of interest with the other employees in the unit.

The Board in **Overnite Transportation Company**, *supra* at 724 (quoting *NLRB v. Action Automotive*, 469 U.S. 490 (1985)) noted the numerous factors used when evaluating whether employees share a community of interest. These factors include the method of wages,

hours of work, employment benefits, separate supervision, qualifications, training and skills, job functions, contact with other employees, integration and interchange with the work functions of other employees, and the history of bargaining.

The duties of the rental agents are to provide service to customers of the Employer seeking to rent motor vehicles. They, along with the lead rental agents, are the only employees working the Employer's rental counter in the common rental building. The nearest employees appear to be the hand-held/return agents who work outside the building in the Employer's vehicle return area. Most of the other employees in the bargaining unit work in a separate facility which was described as being about a half-mile distant.

With the exception of the tire and lube employees and the technicians, the basic job qualifications for the hiring of all employees is that each have a valid driver's license. The tire and lube employees and technician must also have some mechanical experience.

The interaction between the lead rental agents/rental agents, and other employees in the bargaining unit is generally limited to radio communication. Kudej testified that there was quite a bit of communication between rental agents and other employees by radio. However, even he admitted that the contact between rental agents and service agents was limited to situations where they needed a particular car or an item like a car seat. He stated the last time he recalled such an event was more than a month before the hearing. Kudej indicated that rental agents and shuttlers physically interact a little more than once a month, particularly when the rental agent cannot get in touch with the hand-held/return agents.

The testimony of other witnesses indicated even less contact between lead rental agents and service agents. Wallace, a shuttler, stated that she has little contact with rental agents and this occurred only when a customer may have left something in the car. She has never seen any

individuals in these positions doing a shuttler's job. Claypoole, a service agent, indicated that he seldom had contact with rental agents or their leads. In the four years he had been employed the rental agents would occasionally have contact with a service agent to locate a particular car or a lost item. Priestly, the administrative clerk, indicated the only time she has contact with rental agents was when they would come in and pick up their checks.

In a similar vein it also appears that there is little movement from the bargaining unit positions into a lead rental agent or rental agent position or vice-versa. Redding recalled one service agent who applied for and received a rental agent position but the individual was no longer employed by the company.

Kudej indicated that rental agents at times perform the work of other employees but even his testimony indicates these occurrences are infrequent. He stated that the rental agents at times shuttle cars to cover gaps in the schedule. They do some service agent work to assist in cleaning cars but this generally was limited to night-time situations occurring approximately once a month. Also, the rental agents can fill in for shuttlers and hand-held agents when needed. Kudej reported this may happen twice a week.

Although all of the employees receive similar benefits from the Employer there are significant differences between the employees in the bargaining unit proposed by the Petitioner and the lead rental agents/rental agents when it comes to lines of supervision, uniforms, and methods of compensation. Most significantly, the lead rental agents/rental agents are the only employees other than the hand-held/return agents who are paid on a commission basis. Kudej reported the rental agents have a base wage of \$7.25 an hour and then can receive commissions on sales which may amount to a thousand dollars a month. Lead rental agents are also entitled to receive commissions. The city manager testified that the hand-held agents are entitled to get a

commission on the sale of gas but on cross-examination he admitted that none of these agents had received such a bonus in the last year. All other employees at the Cleveland facility are paid on a strict hourly basis.

There is no history of bargaining as it relates to the employees at the Cleveland facility. The Petitioner previously filed a petition in 8-RC-15812 on October 1, 1998 to represent an overall unit of employees at the Employer's Cleveland, Ohio facility including drivers, service agents, rental agents, cashiers, office clerical, mechanics and return agents. The parties were in agreement as to the inclusion of the rental agents at that time. A hearing was held to determine the status of the administrative clerk position. A Decision and Direction of Election issued on October 29, 1999 concluding that the appropriate unit included the administrative clerk. The Petitioner withdrew the petition prior to an election. As noted above, the parties stipulated to the inclusion of the rental agents in the previous case. However, a stipulation between the parties as to the appropriateness of a unit is not binding on the Board. **Mid-West Abrasive Co., 145 NLRB 1665 (1964).**

The Employer has also submitted evidence relating to petitions filed for representation of employees at Alamo locations located in other parts of the country. These documents involve the same Employer but other labor unions. They do not relate to the Cleveland facility but rather to facilities located in California and Nevada. The history of bargaining at other locations is not determinative of the issues present at this location. **Big & Foods, 238 NLRB 855 (1978).**

Although the Petitioner sought inclusion of the rental agent position in a proposed bargaining unit in its past petition, it is not required to seek the same bargaining unit in its current petition. As noted by the Board in **Morand Brothers Beverage Co.**, 91 NLRB 409 (1950), *enfd.* 190 F. 2d 576 (7th Cir. 1950), the Act requires only that a petitioner seek an

appropriate unit and not the most appropriate or comprehensive unit. The Board considers the petitioner's desire concerning the composition of the unit and gives it relevant consideration.

Overnite Transportation Company, 322 NLRB 723 (1996); and **Marks Oxygen Company of Alabama**, 147 NLRB 228 (1964).

Having considered all of the evidence, I conclude that the neither the lead rental agents nor the rental agents employed at the Cleveland facility share a community of interest with the other employees in the petitioned for bargaining unit. It is clear that their duties differ significantly from the other employees and it is unusual that the individuals in the lead rental agent and rental agent positions perform the work of the other employees. Other than by radio communication these individuals rarely interact with the other employees. The lead and journeymen rental agents work primarily behind the rental counter in the rental building while the other employees engage in their job duties outside of the building with many of them located a half mile away. The rental agents have a different line of supervision and work under lead rental agents. The lead rental agents report to management. The rental agents and their leads wear different uniforms and significantly are paid on a wage/commission basis, a system that is unique to these positions. Accordingly, on the basis on all of the foregoing, I conclude that the rental agents and the lead rental agents do not share a community of interest with the bargaining unit and I shall exclude them from the unit.

C. THE TURNBACK ASSISTANT POSITION

Although the position of turnback assistant is sought by the petition, at the hearing the parties failed to list this position as one that they agreed was to be included. However, the Employer has not raised a specific objection to this position.

As indicated at the hearing this position is currently occupied by Cletus Perchinske. The evidence suggests that his duties are similar to those performed by the turnback lead. He services and prepares cars for auction and drives the automobiles to the auction.

It appears that the turnback assistant position shares a community of interest with the bargaining unit. Accordingly, I conclude the turnback assistant position is included in the bargaining unit and the incumbent will be entitled to vote in the representation election.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Bakery Local Union No. 19 affiliated with the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by February 12, 2001.

Dated at Cleveland, Ohio this 29th day of January 2001.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

460-7550-8700
460-5067-0100